IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NORTH CAROLINA WESTERN DIVISION

No. 5:02-CR-80-1H No. 5:13-CV-463-H

JAMES SCOTT ROBINSON,)	
Petitioner,)	
)	
V .)	ORDER
UNITED STATES OF AMERICA,)	
Respondent.)	

This matter is before the court on petitioner's motion to vacate under 28 U.S.C. § 2255. Previously, a petition for a writ of certiorari was granted by the Supreme Court of the United States and judgment was vacated. The case was remanded to the United States Court of Appeals for the Fourth Circuit for further consideration in light of Montgomery v. Louisiana, 136 S. Ct. 718 (2016). [DE #143].

The Fourth Circuit then vacated this court's order and remanded for further proceedings in light of Montgomery. [DE #144]. Following issuance of the mandate, this court entered a briefing schedule directing the parties to respond to the § 2255 regarding the issue of timeliness under Montgomery as well as the merits if the motion were deemed timely. [DE #150]. Accordingly,

the government filed a resuper sponse to petitioner's motion to vacate, [DE #109], waiving the issue of timeliness and conceding petitioner's judgment should be vaited in light of Montgomery. [DE #151]. Petitioner's motion for extension of time to file a reply, [DE #152], is hereby GRANTED, and petitioner's reply, [DE #153], is considered timely filed by this court.

The court holds, and both parties have agreed, that petitioner's judgment should be VACATED in light of Montgomery, and the petitioner should be resentenced.

Therefore, petitioner's judgment is vacated, and this matter is SCHEDULED for resentencing during this court's October 9, 2018 term of court. Petitioner shall remain in custody pending the resentencing hearing. Mr. Gordon Widenhouse, Jr., is DIRECTED to continue representing petitioner in connection with the resentencing.

The United States Probation Office is DIRECTED to provide a resentencing memorandum to the parties and the court.

This 12 day of July 2018.

Malcolm J. Howard

Senior United States District Judge

At Greenville, NC #35